IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.6690 OF 2005

Mr. Kamalaksha Padubidri ...Applicant
Vs.
The State of Maharashtra ...Respondent

Mr. P.M. Pradhan i/by Mr. A.S. Khandeparkar for the Applicant.
Ms S.D. Shinde, A.P.P. for the Respondent.

CORAM : A. S. OKA, J.
DATE : OCTOBER 28, 2005.

P.C.:

1. Heard the learned Counsel appearing for the Applicant and the learned A.P.P. for the State. This is an Application for Anticipatory Bail in connection with F.I.R. registered at the instance of an Officer of ICICI Bank for commission of offence under sections 120-B, 466, 467, 468, 471, 420, 409 of the Indian Penal Code. The allegation appears to be that one Shridhar Iyengar opened a current account with D.N.Road branch of the said Bank as Proprietor of M/s Suraiyya International. On 11th November, 2004, he submitted two bills for total amount of Rs.5.62 crores. The bills were accepted by one Milind Desai, Sole Proprietor of Fortune Systems ("Fortune") and co-accepted by Dena Bank which was the Banker of Fortune. Accordingly, the credit of Rs.5.62 crores was given to Suraiyya International. Thereafter, twenty-seven bills were also received by the said Bank

from the Suraiyya International drawn on Fortune and co-accepted by Milind Desai as well as co-accepted by Dena Bank. The total amount of twenty-seven bills is Rs.36,65,75,000/- (Rupees Thirtysix crores sixtyfive lacs and seventyfive thousand). Thereafter, a letter was received from Dena Bank, Thakurdwar Branch stating that the signatures of the officers co-accepting the bills are forged and the code numbers mentioned below the signatures did not belong to the any official of the Dena Bank.

2. It appears that during the course of investigation it was seen that the Applicant had sold a software for Rs.9.55 crores to the accused Shridhar, Proprietor of Suraiyya International and raised eleven invoices in the names of various firms of which the Applicant and his family members are partners. It is alleged that the amounts received from accused Sridhar have been siphoned by the Applicant to various bank accounts of the said firms. The allegation of the prosecution is that the software which was allegedly sold by the Applicant was not traced anywhere.

3. Shri Pradhan, the learned Counsel appearing for the Applicant invited my attention to the orders passed in earlier application for Anticipatory Bail

made by the Applicant before the Sessions Court. He pointed out that in the said Application on 08th June, 2005 a statement was made by the Investigating Officer that the custodial interrogation of the Applicant was not required since all the documents were in the custody of the Investigating Officer. He submitted that even the report of the Computer Forensic Division regarding the software of the Applicant does not support the prosecution.

4. He submitted that the Applicant has attended the office of the Investigating Officer time and again and the entire documentary evidence is in possession of the Investigating Officer including the software. He placed reliance a decision of this Court in Criminal Application No.605 of 1988 dated 23rd March, 1988 (Sham Bhatia Vs. State of Maharashtra) and submitted that since all the documentary evidence was with the Investigating Officer, custodial interrogation of the Applicant was not necessary. He submitted that the Applicant has surrendered his passport and is ready and willing to co-operate with the Investigating Agency. He submitted that in so far as two main co-accused are concerned namely Milind Desai and Shridhar Iyengar, investigation has been completed and chargesheet has been filed and

therefore, custodial interrogation of the Applicant is not required.

5. I have considered the submissions. In the first Application for Anticipatory Bail filed by the Applicant in the Sessions Court, in the order dated 02nd May, 2005, the learned Additional Sessions Judge has noted that the report of valuation of the software of the Applicant was awaited. It is recorded that the custodial interrogation of the Applicant was not required and he may be directed to attend the office of the Investigating Officer. The said Application was disposed of on 28th June, 2005 by directing the Investigating Agency to give seventy two hours notice to the Applicant. It appears that report dated 28th August/ 06th September, 2005 was submitted to the Investigating Agency by the Computer Forensic Division of the office of the Government Examiner of Questioned Documents, Directorate of Forensic Science, Ministry of Home Affairs, Hyderabad and on the basis of the said report notice was given on 15th September, 2005 to the Applicant in terms of the earlier order of the Sessions Court. Thereafter, the Applicant made an Application for Anticipatory Bail which has been rejected by the Sessions Court.

6. It must be borne in mind that the prosecution found that large amount of more than Rs.9 crores was paid by principal accused Shridhar Shriram Iyengar to the Applicant for purchase of software. The report of the expert which is relied upon by the Investigating Agency discloses that the software present in the suspected storage media i.e. Compact Discs appears to be Nedgraphics Fashion Studio, copyright software of M/s Nedgraphics. It is stated that it is not possible to assess the value of the software present in suspected storage media. It is also stated that the Application programme given is not completely executable programme which may be due to incomplete programme and/ or wrong instructions given for installation and execution. Thus, prima facie it appears from the report that the software of the Applicant appears to be copyright software of M/s Nedgraphics. In this connection, it will be necessary to refer to paragraph Nos.8 to 11 of the affidavit-in-reply of Inspector of Police, Unit I, Economic Offences Wing.

8) The police have already arrested accused 1)Milind Desai, 2)Sridhar Iyengar, 3)Nedunchezhian Velu and 4)Dinesh Pandey in this case. During the course of investigation

from the Bank Statement of Suriyya International, (A/c#623505379545) it is revealed that the accused Milind Desai has received about Rs.9.93 crore. Likewise, accused Sridhar Iyengar received about Rs.13.80 Cr. and applicant's as well as his relatives firms have received Rs.9.69 cr. approximately. It is pertinent to note received Rs.9.69 cr.approximately. It is pertinent to note that the applicant namely, Mr.Kamalaksha @ Kamal Padubidri is one of the accused in the present criminal case.

9) The applicant and his family members are in the business of garments under the name of Kalyani Exporters having office at Ujagar Industrial Estate, Deonar, Mumbai. The Applicant and his brothers Premlaksh Padubidri, Uday Yermal, Mrs. Sandya Padubidri, Mrs. Kalyani are the partners of the said firm. Then 1)Ambiance Impex 2)Asian Fabrics, 3)Flair Clothing Fashion, 4)Global Text Creations, 5)Piyanka Creations, 6)Sigma Silk Processes, 7) Sai Fashions are the other firms/companies of the said family. Almost all firms function from the above office. But

addresses of the some firms are shown at different places.

10) The applicant showed that he has sold the software of garment and apparel designing, fabric screen printing for Rs.9.65 crores to accused Shridhar Iyengar’s firm Suriyya International and raised 11 invoices in the name of the above mentioned firms. Then the said firms received Rs.9.69 crores from Shridhar Iyengar by cheque (from the account of Suriyya International in ICICI bank). The said amount has been siphoned to various Bank accounts of below mentioned firms of the accused Mr. Kamal Padubidri and his associates. Hereto annexed and marked as Exh."A" is the copy of the Statement of account.

1) M/s.Ambiance Impex - Parsik Janata Shakari Bank, A/c.#023/3807:-Rs.1.87 crores.

2) M/s.Asian Fabric - Federal Bank, Mumbai A/c.#CA245:-Rs.1.16 crores.

3) M/s.Flair Clothing Fashions - Bharat

Co-op Bank, A/c.#121/5175:-Rs.1.66 crores.

4) M/s.Global Tex Fashions - Chembur Nagrik Sahakari Bank, A/c.#0003639:-Rs.1.18 crores.

5) M/s.Kalyani Exporters - HSBC, A/c.#002194132001, Rs.64.75 lacs.

6) M/s.Preyanka Creations - Corporation Bank, A/c.# CA/01/500201, Rs.2.58 crores.

11. During course of investigation accused Shridhar Iyengar and Milind Desai have told that they have to received any software from the applicant. Moreover the said software was not traced anywhere during searches of the accused persons offices and houses. The end use of the said software was not traced. The said invoices are prepared without actual delivery of the material. There is no proof of delivery of the software with accused. The business of the said firms is of garment manufacture and not of software development.

The applicants firms don't have the permanent software experts in his firms.The address of the purchaser's (Iyengar) firm is bogus.

7. The Apex Court has held in a decision reported in 2003(4) Crimes, Page 264, Supreme Court (Bharat Chaudhary and Anr. Vs. State of Bihar and Anr.) that the gravity of offence is an important factor to be taken into consideration while granting Anticipatory Bail so also need for custodial interrogation. These are the only factors which must be borne in mind while dealing with Application for Anticipatory Bail. In another decision of the Apex Court reported in 1997(7) Supreme Court Cases, Page 187 (State Vs. Anil Sharma), the Apex Court held that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect armed with a favourable order under section 438 of the said Code. In this case, there cannot be any dispute that the allegations are of grave and serious nature involving large amount of public money. Earlier statement appears to have been made by the Investigating Officer that custodial interrogation is not required obviously because the report of the expert was awaited at that time. The report of the expert prima facie creates a doubt regarding genuineness and originality of the

software of the Applicant for which such a large amount appears to have been transferred to him. This is not simple case where the entire prosecution is based on only documentary evidence. In my view, no case is made out for grant of Anticipatory Bail and the Application is rejected.

8. It is made clear that the observations which are made in this order are made only for limited purposes of considering the prayer for Anticipatory Bail and if a regular Application for bail is made by the Applicant, the same will be decided by the appropriate Court on its own merits.

9. At this stage, Shri Pradhan states that the Applicant may be granted time of two weeks to surrender and during the said period of two weeks, he will regularly attend the office of the Investigating Officer. The said prayer is opposed by the learned A.P.P.

10. Considering the fact that for a long time, the Applicant has been protected by ad-interim order, reasonable time deserves to be granted in favour of the Applicant to surrender. Accordingly, time is granted to the Applicant to surrender before the

Investigating Officer till 12th November, 2005, subject to condition that in the meanwhile, the Applicant will attend the office of the Investigating Officer as and when called upon to do so and will co-operate for investigation.

JUDGE